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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,009	12/29/2000	Raja Daoud	10002669-1	6164

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EXAMINER	
SALL, EL HADJI MALICK	
ART UNIT	**PAPER NUMBER**
2157	5

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/751,009	DAOUD ET AL.	
	Examiner	Art Unit	
	El Hadji M Sall	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2000*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 4.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to the application filed on December 29, 2000. Claims 1-20 are pending. Claims 1-20 represent apparatus and method for identifying a requested level of service for a transaction.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20, of copending Application No. 09/751,011. Although the conflicting claims are not identical, they are not patentably distinct from each other because they recite means or steps that are substantially the same and that would have been obvious to one of ordinary skill in the art. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either

cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Colby et al. (US 6,449,6447)

Colby teaches the invention as claimed including a system and method for choosing the best fit-server based on contents of request (see abstract).

As to claim 1, Colby teaches an apparatus and method for identifying a requested level of service for a transaction comprising: computer readable storage media (figure 1); and computer readable program code stored in said storage media (figure 1) comprising:

a) program code for selecting said requested level of service
for said transaction (column 3, lines 16-18, Colby discloses a method for selecting a best-fit server...service a client request); and

b) program code for assigning said requested level of service
to said transaction (column 3, lines 21-24, Colby discloses a server from among plurality of servers....which assigns a proximity preference to the identified servers).

As to claim 2, Colby teaches an apparatus, as in claim 1, wherein said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service (column 5, lines 2-6, Colby discloses each stream of information...is broken into packets).

As to claim 3, Colby teaches an apparatus, as in claim 1, further comprising:

a) program code for selecting a backup level of service (column 8, lines 60-67, Colby discloses if the CSD is unable to identify any local server to serve the content request...then the status indicator that flow should be redirected); and

b) program code for assigning said backup level of service to said transaction (column 8, lines 60-67, Colby discloses if the CSD is unable to identify any local server to serve the content request...then flow is redirected to a remote server).

As to claim 4, Colby teaches an apparatus, as in claim 1, wherein said requested level of service is a predefined service category (column 2, line 67 to column 3, lines 1-3, Colby discloses after a flow is detected, a QoS category is associated with the flow, and buffer and bandwidth resources consistent with the QoS category of the flow are allocated).

As to claim 5, Colby teaches an apparatus, as in claim 1, wherein said requested level of service is based on a user identification (column 3, lines 27-34, Colby discloses servers that are in the same location as the client may be identified...).

As of claim 6, Colby teaches an apparatus, as in claim 1, wherein said requested level of service is based on a transaction type (column 2, lines 59-63, Colby discloses the server is chosen by the flow switch based on the type of content requested).

As to claim 7, Colby teaches an apparatus, as in claim 1, further comprising a user interface for selecting said requested level of service (column 8, lines 39-44, Colby discloses when client sends a content request to a server... the content request is intercepted by the content-aware flow switch 110).

As to claim 8, Colby teaches apparatus, as in claim 1, wherein said requested level of service includes a plurality of parameters (column 7, lines 2-4, Colby discloses the WFR, CSD, and FAC are responsible for selecting a server to service a content request based on a variety of criteria).

As to claim 9, Colby teaches a method for requesting a level of service for a transaction on a network (figure 1c), comprising:

selecting said requested level of service for said transaction (column 3, lines 16-18, Colby discloses a method for selecting a best-fit server...service a client request); and

assigning said requested level of service to said transaction (column 3, lines 21-24, Colby discloses a server from among plurality of servers....which assigns a proximity preference to the identified servers).

As to claim 10, Colby teaches a method, as in claim 9, wherein selecting said requested level of service comprises receiving a user-defined level of service (column 3, lines 27-34, Colby discloses servers that are in the same location as the client may be identified...).

As to claim 11, Colby teaches a method, as in claim 9, wherein selecting said requested level of service comprises assessing a number of characteristics of said transaction (column 4, lines 1-11, Colby discloses transcontinental network links introduced delay and are frequently congested...when performing a server selection, a server that shares a "closest" backbone ISP with the client is preferred...)

As to claim 12, Colby teaches a method, as in claim 9, wherein a network device best provides said requested level of service (column 2, lines 59-63, Colby discloses the server is chosen by the flow switch based on the type of content requested).

As to claim 13, Colby teaches a method, as in claim 9, wherein said requested level of service is automatically assigned to said transaction (column 3, lines 21-24, Colby discloses a server from among plurality of servers...a method which assigns a proximity preference to the identified servers).

As to claim 14, Colby teaches an apparatus for routing a transaction over a network based on a requested level of service associated with said transaction, comprising: a number of computer readable storage media (figure 1); and computer readable program code stored in said number of storage media (figure 1), comprising:

a) program code for selecting said requested level of service for said transaction (column 3, lines 16-18, Colby discloses a method for selecting a best-fit server...service a client request);

b) program code for assigning a service tag to said transaction, said service tag including said requested level of service (figure 19).

c) program code! for reading said requested level of service from said service tag (figure 19); and

d) program code for directing said transaction over said network based on said requested level of service read from said service tag (figure 19).

Claims 15-20 do not teach or define any new limitations above claims 1-14 and therefore are rejected for similar reasons.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to El Hadji M Sall whose telephone number is 703-306-4153. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

El Hadji Sall
Patent Examiner
Art Unit: 2157

SALEH NAJJAR
PRIMARY EXAMINER